IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 632 OF 1999

Shri R.K.Saksena & Ors. ...Applicants
V/s.
State of Maharashtra. ...Respondent

Mr.Ganesh Gole for Applicants.
Ms.R.M.Gadhavi, APP for State.

CORAM : V.M. KANADE, J.

DATED : JANUARY 16, 2006

P.C. :-

. Heard learned Counsel for the applicants and learned APP for the State.

. The applicants are challenging the order passed by the Judicial Magistrate, First Class, Pimpri, Pune, in Criminal Case No.3695/95 whereby the learned Magistrate was pleased to convict the accused-applicants herein for the offence punishable under Sections 33-EEC(c) of the Drugs and Cosmetics Act, 1940 and sentenced them to under simple imprisonment for six months and to pay a fine of Rs.2000/- each and in default, to suffer simple imprisonment for three months. This order was confirmed by the Sessions Court. The

applicants are challenging the aforesaid order.

2. It is submitted by the learned Counsel appearing on behalf of the applicants that the Public Prosecutor has assured the applicants that if they pleaded guilty to the offence, they would be let off with simple sentence. He submitted that practice of plea bargaining has been deprecated by Supreme Court in number of judgments. He submitted that the trial Court, therefore, ought to have decided the case on its own merits. He relied on the judgment of the Supreme Court in the case of **State of Uttar Pradesh V/s. Chandrika reported in JT 1999 (8) SC page 481.**

3. Learned APP submitted that having pleaded guilty to the said offence, it was not open for the applicants to challenge the sentence which was awarded by the trial Court. She submitted that it was not open for the applicants now to argue that the Magistrate had awarded the sentence on plea bargaining as this concept was foreign to the Indian Criminal jurisprudence and therefore, the allegation was liable to be set aside.

4. I have heard both the learned Counsel at length. From the perusal of the order passed by the magistrate, it can be seen that the learned Magistrate was pleased to consider the plea made by the learned counsel for the accused and on the basis of the said plea, had awarded sentence of six months and had imposed fine of Rs.2000/-. The Supreme Court in the case of **Murlidhar Meghraj Loya v. State of Maharashtra reported in (1976) 3 SCC 684 in para 13** has disapproved the practice of plea bargaining or plea negotiation and compromise in criminal cases. In para 13 of the said Judgment, Supreme Court has observed as under :-

> "To begin with, we are free to confess to a hunch that the appellants had hastened with their pleas of guilty hopefully, induced by an informal, tripartite understanding of light sentence in lieu of **nolo contendere** stance. Many economic offenders resort to practices the Americans call 'plea bargaining', 'plea negotiation', 'trading out' and 'compromise in

criminal cases' and the trial magistrate drowned by a docket burden nods assent to the sub rosa ante-room settlement. The businessman culprit, confronted by a sure prospect of the agony and ignominy of tenancy of a prison cell, **'trades out' of the situation, the bargain being a plea of guilt, coupled with a promise of 'no jail'. These advance arrangements please everyone except the distant victim, the silent society.** The prosecutor is relieved of the long process of proof, legal technicalities and long arguments, punctuated by revisional excursions to higher courts, the court sighs relief that its ordeal, surrounded by a crowd of papers and persons, is avoided by one case less and the accused is happy that even if legalistic battles might have held out some astrological hope of abstract acquittal in the expensive hierarchy of justice-system, he is free early in the day to pursue his old profession. It is idle to speculate on the virtue of negotiated settlements of criminal cases, as obtains in the

United States but **in our jurisdiction, especially in the area of dangerous economic crimes and food offences, this practice intrudes on society's interests by opposing society's interests by opposing society's decision expressed through predetermined legislative** fixation of minimum sentences and by subtly subverting the mandate of the law. The jurists across the Atlantic partly condemn the bad odour of purchased pleas of guilt and partly justify it philosophically as a sentence concession to a defendant who has by his plea 'aided in ensuring the prompt and certain application of correctional measures to him' :

In civil cases we find compromises actually encouraged as a more satisfactory method of settling disputes between individuals than an actual trial. However, if the dispute ... finds itself in the field of criminal law, "Law Enforcement" **repudiates the idea of compromise as immoral,** or at best a necessary evil. **The**

> **"State" can never compromise. It must "enforce the law".** Therefore open methods of compromise are impossible. [Arnond: Law Enforcement - An attempt at Social Dissection, 42 Yale, L.J.I. 19 (1932)]""

5. Similarly, in the case of **Ganeshmal Jashraj V. Government of Gujarat and Another (1980) 1 SCC 363 and Thippaswamy v. State of Karnataka (1983) 1 SCC 194,** the Supreme Court set aside the order passed by the High court and remanded the matter to the Judicial Magistrate for trial of the accused in accordance with law as it came to the conclusion that the conviction and sentence were based on an admission of guilt as a result of plea bargaining.

6. Similarly, the Supreme Court in the case of **Kachhia Patel Shantilal Koderlal v. State of Gujarat and Another reported in (1980) 3 SCC 120** held that the practice of plea bargaining was unconstitutional, illegal and would tend to encourage corruption, collusion. This has been reiterated by the Supreme

Court in the case of **State of Uttar Pradesh v/s. Chandrika (Supra).**

7. From the Judgment and order passed by the Magistrate, it is apparent that there was some kind of understanding between the accused and the Public Prosecutor cognisance of which has been taken by the Magistrate and accordingly, the sentence has been awarded to the applicant. Very often, the Magistrate who are overburdened with cases may resort to this practice in order to curtain the backlog. It has to be stated here that this practice should be discouraged. It should not be followed by the lower Courts since from the record, it is apparent that plea has been recorded and inducement has been given by the Public Prosecutor. The said Judgment and Order of both the lower Courts which is based on this plea would have to be set aside.

8. In the result, Criminal Application is allowed. The Judgment and Order passed by the lower Courts is set aside. Criminal Application under section 482 of the Cr.P.C. is allowed. The matter is remanded back to the

Magistrate. The Magistrate to record the plea afresh and thereafter, proceed to decide the matter on merits.

. The application is allowed in the above terms.

(V.M.KANADE, J.)